



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,333	03/26/2004	Nelson G. Bingel III	31518.0new	1590
26712	7590	04/19/2007	EXAMINER	
HODGSON RUSS LLP ONE M & T PLAZA SUITE 2000 BUFFALO, NY 14203-2391			LAUX, JESSICA L	
			ART UNIT	PAPER NUMBER
			3635	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/19/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/811,333	BINGEL ET AL.
	Examiner	Art Unit
	Jessica Laux	3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 February 2007.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 7, 11, 12 is/are allowed.
- 6) Claim(s) 1-6, 8-10 and 13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>11/24/2006 &amp; 02/13/2007</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Response to Arguments***

Applicant's arguments filed 02/13/2007 have been fully considered but they are not persuasive.

Regarding claim 1, applicant has argued that Kennedy does not disclose two flanges that extend from the longitudinal edge in diverging directions as the portion between elements 10 and 8 is not a flange.

Examiner disagrees noting that the portion between 10 and 8 is indeed a flange portion that does extend from the longitudinal edge via portion 11. Applicant's claim does not preclude an intermediary portion extending between the flange and the longitudinal edge. Therefore Kennedy does disclose two flanges extending from the longitudinal edge in diverging directions. Furthermore examiner notes that the edge between the flange 11 and the portion between 11 and 8 (at the bend) is considered a "longitudinal edge" as it is an edge portion that extends in the longitudinal direction.

Regarding claim 9 applicant argues that portions 8&5 and 4&7 are not "straight" as they are bent with respect to one another. Examiner notes that this is not a convincing argument as the portions 8&5 and 4&7 are straight in the longitudinal direction and therefore meet the claim limitations as the claim does not preclude the portions from being bent with respect to one another.

Regarding claim 10 applicant argues that Kennedy does not disclose an axis of symmetry and further that flanges 10 and 11 are not symmetrical about an axis of

symmetry. Examiner notes that 10 and the portion between 11 and 8 are indicated as being the flanges (and not portions 10 and 11) and that these portions do extend from a longitudinal edge (as explained above) where the edge between 11 and the portion between 11 and 8 is a longitudinal edge. Therefore Kennedy does disclose an axis of symmetry midway between the flanges (the center of the structure) where the flanges, bridge portions and apex portions are symmetrical about the axis of symmetry.

### ***Claim Objections***

Claim 7 is objected to because of the following informalities: the status identifier of the claim is incorrect. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by B.H. Kennedy (2508032).

Regarding claims 1-5: B.H. Kennedy discloses a truss for reinforcing a pole, the truss comprising: an elongated body having a pair of opposite ends connected by a pair of longitudinal edges (Figure 3, element 2); the body having an open cross-sectional configuration characterized by a pair of side flanges (10 and the portion between 11 and 8) each extending from a respective one of the longitudinal edges in a direction diverging from the other side flange, and an intermediate section connecting the pair of side flanges, wherein the intermediate section of the cross-sectional configuration

includes: a pair of bridge portions (8 & 5 and 4&7) associated, one with each of the pair of side flanges, and joined by a curved bend, each bridge portion extending in a direction forming an included obtuse angle with the direction of the associated flange; and a pair of apex portions (the portions extending on each side of 6) associated one with each of the pair of bridge portions, and joined by a curved bend, each apex portion extending in a direction forming an included obtuse angle with the direction of the associated bridge portion, wherein the pair of apex portions converge toward one another and are joined by a curved bend forming an excluded angle (where each apex portion is joined to element 6 by a curved bend, Figure 3).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 8, 9-10, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over B.H. Kennedy (2508032).

Regarding claims 6 and 8: Kennedy does not expressly disclose the truss according to claims 2 and 3, wherein fastener holes are provided through each of the pair of bridge portions and through the curved bend joining the apex portions. However Kennedy does disclose that bolts may be used for fastening in the claimed locations,

and it obvious and well known to have holes provided for fastening with bolts.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the truss of Kennedy to have fastener holes provided through each of the pair of bridge portions (Figure 4) and through the curved bend (6, Figure 1) joining the apex portions.

Regarding claim 9: Kennedy discloses a truss for reinforcing a pole, the truss comprising: an elongated body having a pair of opposite ends connected by a pair of longitudinal edges; the body having an open cross-sectional configuration characterized by: a pair of straight apex portions (the portions extending on each side of 6) forming an excluded angle A1 with one another; a pair of straight bridge portions (8 & 5 and 4&7) each forming a first included angle A3 with an associated one of the pair of apex portions; a pair of straight side flanges (10 and the portion between 11 and 8) each forming a second included angle A2 with an associated one of the pair of bridge portions;

Kennedy does not expressly disclose that the angles A1, A2, and A3 are chosen to satisfy the following relationship:  $180 - A2 - A3 + (1/2) * A1 > 0$  in which angles A1, A2, and A3 are expressed in degrees. However applicant has not disclosed that such a relationship solves a stated problem, is used for a particular purpose, or provides an advantage. Applicant does state that such a relationship causes the flanges to diverge from one another. Kennedy discloses flanges that diverge from one another and portions that form obtuse angles with one another, moreover it appears that the truss of Kennedy or applicant's invention would perform equally well with the portions extending

at any obtuse angle. Accordingly, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have modified Kennedy such that the angles satisfied the required relationship because such a modification would have been considered a mere design consideration which fails to patentably distinguish over Kennedy.

Regarding claim 10: The truss according to claim 9, wherein the cross-sectional configuration is further characterized by an axis of symmetry midway between the pair of edges, and the pair of apex portions are symmetrical about the axis of symmetry, the pair of bridge portions are symmetrical about the axis of symmetry, and the pair of side flanges are symmetrical about the axis of symmetry (Figure 3).

Regarding claim 13: The truss according to claim 9, wherein the pair of apex portions are joined to one another by a curved bend, each of the pair of bridge portions is joined to an associated one of the pair of apex portions by a curved bend, and each of the pair of side flanges is joined to an associated one of the pair of bridge portions by a curved bend (Figure 3, element 2).

#### ***Allowable Subject Matter***

Claims 7 and 11-12 are allowed.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JL  
04/06/2007

  
Jeanette Chapman  
Primary Examiner

Jeanette Chapman  
Primary Examiner